

STAT

3



AMERICAN BAR ASSOCIATION

STANDING COMMITTEE **Law and National Security**
INTELLIGENCE REPORT

Volume 4, Number 5

Morris L. Leibman, Chairman

May 1982

Preliminary Analysis— Intelligence Executive Orders

Editor's Note: The Standing Committee on Law and National Security is in the process of preparing a report on the new executive orders on intelligence, Executive Orders 12333 and 12334, under the supervision of a subcommittee consisting of Axel Klei-boemer, Larry H. Williams and Daniel B. Silver. The report will consist of a section by section comparison of the two orders with their predecessor, Executive Order 12036, together with commentary on the significance of the changes. The following discussion of the principal features of the new orders is drawn from the subcommittee's current draft introduction to the report. It is not intended to be definitive and readers will have to await the full report for a complete interpretive analysis. The committee has not had an opportunity to study the content of this preliminary discussion. Hence, it is published for information.

Despite the numerous differences between Executive Orders 12333 and 12334 and the previous order, perhaps the most significant phenomenon is that these new orders retain in very large part the structure and substance of regulation established under the previous administration.

There were many in the new administration, and in the transition teams and outside organizations advising them, who advocated the abolition of Executive Order 12036, or its replacement by significantly less restrictive provisions than the orders the president ultimately adopted. It appears, from analysis of the new executive orders, that the more radical changes advocated by this group may have been forestalled by a number of cosmetic changes and modifications of tone whose significance is less real than apparent. In terms of the historical development of intelligence law by executive order (i.e., a publicly announced framework of rules to govern intelligence activities), the

most important aspect of the new executive orders thus is the aspect of continuity they present, rather than the changes they embody.

A new administration, having assumed office on a platform, *inter alia*, of removing restrictions on the intelligence agencies, nonetheless has left in place the basic structure of regulation created under the previous administration (including a special office within the Justice Department devoted to this function) and many (although clearly not all) of the substantive restrictions. As a result, it seems unlikely that any future administration will be inclined to dismantle the existing structure of regulation or feel free to do so.

A second preliminary observation is that the structure adopted in the new executive orders makes it very difficult to evaluate the significance of many of the changes that were made. The previous executive order provided a variety of principles, limitations, and restrictions, to be amplified in procedures adopted by

Continued on page 2

Intelligence Identities Protection Act

The House passed H.R. 4, the Intelligence Identities Protection Act, in September 1981. The Senate passed a similar version of the Act in March 1982. It was anticipated that there would be little difficulty in reconciling the two versions in conference. However, as we go to press, the conference committee has not yet met. The reason given for the delay was that there was more difficulty than had been anticipated in reconciling the differences between the staffers of the House and Senate conferees who have by now held a series of preliminary discussions. By the time the next *Intelligence Report* appears, we hope to be able to provide our readers with an account of the final action taken by Congress on this measure.

Editor: William C. Mott. Associate Editor: David Martin. Standing Committee on Law and National Security, ABA, 1155 East 60th Street, Chicago, Ill. 60637.

Copyright © 1982 American Bar Association